BEFORE THE ARBITRATOR

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| In the Matter of the Arbitration of a Dispute Between | |
| GENERAL TEAMSTERS UNION, LOCAL 662 | Case 1 No. 45489 A-4767 |
| and | |
| INDIANHEAD FOODSERVICE DISTRIBUTOR, INC. | |

Appearances:
Ms. Christel Jorgensen, Business Agent, on behalf of the Union.
Weld, Riley, Prenn and Ricci, S.C., by Mr. James M. Ward, on behalf of the Company.

ARBITRATION AWARD

The above-entitled parties, herein the Union and Company, are privy to a collective bargaining agreement providing for final and binding arbitration before a Wisconsin Employment Relations Commission staff arbitrator. Pursuant thereto, I heard this matter on June 24, 1991 in Eau Claire, Wisconsin. The hearing was not transcribed and both parties filed briefs which were received by July 3, 1991.

Based upon the entire record, I issue the following Award.

ISSUE:

Since the parties were unable to jointly agree upon the issue, I have framed it as follows:

> Did the Company violate the contract when it failed to offer certain warehouse work on Mondays to grievant David Brantner, and if so, what is the appropriate remedy?

DISCUSSION:

Brantner, who is classified as an over-the-road Truck Driver, regularly drove his truck Monday through Friday and put in a substantial amount of overtime over and above the contractually guaranteed 40 hour week. In addition, he often loaded and unloaded trucks out of the Company's Eau Claire, Wisconsin warehouse.

In January, 1991 -- and in response to a recent acquisition, expansion of its work force, safety concerns over the large amount of overtime that its drivers were working, and the need for greater flexibility in scheduling -- the Company reorganized its operations so that it now schedules its over-the-road drivers like Brantner to drive their trucks four (4) days a week and to work in its warehouse for the fifth day. Hence, Brantner now drives his truck Tuesdays through Fridays and works in the warehouse on Mondays where he mainly loads and unloads trucks and puts the goods away, just as he has done in the past. Ever since this change in January, 1991, Brantner has worked at least forty (40) hours per week and he has worked overtime in every week following the change. However, the amount of his weekly overtime is about ten (10) or so hours less than it was previously, so that he now works about 48 to 50 hours per week.

In order to obtain yet even more overtime and to bring him back to the level of overtime that he previously had, Brantner asked the Company to let him

perform some of the general warehouse duties traditionally performed by seasonal and casual employes (about 6) who are outside the bargaining unit. Such "grunt" duties, which Brantner and other bargaining unit employes have never performed, include washing trucks, sweeping the floor, bagging, cleaning, etc. It is undisputed that these non-bargaining unit employes are not performing any of the work previously performed by bargaining unit members before the change and that no bargaining unit members have failed to receive the 40-hour week guaranteed under the contract as a result of the changes herein.

The Company refused Brantner's request, hence leading to the instant grievance which was filed on February 25, 1991.

In support thereof, the Union mainly argues that the Company is contractually required under Article 12, Section 1, of the contract to offer said work to bargaining unit employes before non-bargaining unit employes because it is over and above the contractually guaranteed 40 hour week. As a remedy, it seeks the assignment of this work in the future, along with a make-whole remedy giving Brantner a sum of money for the hours of warehouse work he lost to non-bargaining unit personnel following the filing of his grievance, and exclusive of the hours that Randy Lauritan worked in April, 1991.

The Company, in turn, maintains that the contract clearly gives it the right to use non-bargaining unit employes in certain circumstances and that the grievance herein, if sustained, would effectively negate this right. It also contends that a well-developed past practice supports its position; that the grievant is improperly trying to exercise bumping rights and is trying to circumvent the Company's right to schedule work; and that it retains the managerial right to make the work assignment in issue and to schedule Brantner's hours the way it has because of legitimate business reasons.

The resolution of this issue turns upon Article 12, Section 1, of the contract which provides:

> Section 1. All employees shall be paid for all time spent in the service of the Employer. For Warehousemen (Receiving), the guaranteed work week will be forty (40) hours per week, Monday through Saturday. For Warehousemen (Shipping), and City Drivers, the guaranteed work week will be thirty-six (36) hours per week. For the Utility position, the normal work week shall be Monday through Saturday; this, however, shall not constitute a guaranteed work week. For Drivers, the guaranteed work week will be forty (40) hours of pay per week from Monday through Saturday, at the applicable rate. Any employee called for work any day shall be guaranteed four (4) hours of work or equivalent pay. All time worked over ten (10) hours per day or forty (40) hours per week, whichever is greater, shall be paid for at one and one-half times the employee's regular rate of pay. Time and one-half (1 1/2) the regular rate shall be paid for work performed on Sunday. All employees have the right of refusal for any Sunday work. It is agreed that the most junior employee shall be required to work the Sunday.
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> The Union has agreed not to bargain for Part Time Employees as per Article 1, Section 2, and the Employer has agreed that if he uses part time employees, they

> will only be used in the following manner: Part Time Employees shall not be used at any time to replace any regular employee nor shall they be used in lieu of hiring employees nor shall they be used when regular employees are laid off. At all other times during the week regular employees will have first preference to all the work if available. (Emphasis applied)

This language, on its face, clearly gives the Company the right to use non-bargaining unit employes subject to only three (3) reservations -- i.e., that they not be used to replace regular employes; that they not be used to avoid hiring new employes; and that they not be used when regular employes are laid off.

Well here, none of these limitations are applicable, as the Company is simply using non-bargaining unit employes in the very same fashion it has always done in the past -- i.e., to perform certain non-bargaining unit "grunt" work. Hence, it is Brantner, and not the Company, which is trying to alter the status quo and the way this language has been applied in the past.

Furthermore, the Company is quite correct when it complains that sustaining the grievance would in effect allow other regular bargaining unit members to file similar grievances and to thereby possibly totally do away with all of the work now done by non-bargaining unit personnel.

If there were any bargaining history to support such a claim, the Union would have a much stronger case. But in fact there is no such history, as none of the participants at the hearing could testify about how Article 12, Section 1, came into the contract. That being so, there simply is no valid reason why the Union should be given jurisdiction over such "grunt" work under the facts herein and why Brantner should be allowed to "bump" into such work when the Union has agreed for so many years that it belongs outside the bargaining unit, and when none of the aforementioned three (3) exceptions noted above have been met.

Sustaining the grievance would also render superfluous these three limitations since bargaining unit personnel could obtain as much of that work as they wanted, whenever they wanted it. Since one of the cardinal rules in arbitration is that contract provisions should not be rendered meaningless when an alternative, more reasonable interpretation is possible, application of that principle here means that the Company's interpretation is preferred over the one urged by the Union.

The Company's interpretation is also more in line with Article 5 of the contract, entitled "Maintenance of Standards," which gives it the right to "establish reasonable schedules of work", to "assign employes", and to "determine the methods, means and personnel" in carrying out its operations. Sustaining the grievance here would interfere, if not totally negate, these rights.

When all of the foregoing is combined, it becomes clear that the last sentence of Article 12, Section 1, which the Union relies upon must be read within the terms of this larger context and that the Company therefore was not required to give Brantner the additional non-bargaining unit work he wanted.

Hence, it is my

AWARD

That the Company did not violate the contract when it failed to offer

certain warehouse work on Mondays to grievant David Brantner; the instant grievance is therefore denied and dismissed.

Dated at Madison, Wisconsin this 13th day of September, 1991.

By Amedeo Greco /s/
Amedeo Greco, Arbitrator

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